

FILED

JUN 30 2014

U. S. DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
CAPE GIRARDEAU

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,
ex rel. PAUL CAIRNS, et al.,

Relators,

V.

D.S. MEDICAL, L.L.C., et al.,

Defendants.

No. 1:12 CV 00004 SNLJ

**THE GOVERNMENT'S NOTICE OF ELECTION TO INTERVENE
IN PART AND TO DECLINE TO INTERVENE IN PART**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4), the United States notifies the Court of its decision to intervene in part of this action and to decline to intervene in part of this action. Relators filed a Complaint in this matter on January 5, 2011. At this time, the United States intervenes as to Counts Two and Four of the Relators' Complaint pursuant to the False Claims Act, 31 U.S.C. § 3729(a)(1) et seq. The United States declines to intervene at this time as to any other count or claim contained in Relators' Complaint pursuant to the False Claims Act beyond Counts Two and Four pursuant to 31 U.S.C. § 3730(b)(4)(A)-(B).

The United States respectfully seeks leave pursuant to Fed. R. Civ. Proc. 15(a)(2) to file its own Complaint intervening as set forth above and adding additional allegations and counts.

The United States declines to intervene in a portion of this action, namely Counts One and Three. The False Claims Act, at 31 U.S.C. §§ 3730(b)(1) and 3730(b)(4)(b), allows the relators to either maintain the declined portion of the action in the name of the United States or dismiss these non-intervened claims without prejudice. If relators choose to dismiss any claims voluntarily, then the False Claims Act provides that the "action may be dismissed only if the

court and the Attorney General give written consent to the dismissal and their reasons for consenting." *Id.* Here, Relators' counsel has informed the United States that Relators will be seeking to dismiss, without prejudice, the remaining allegations of the Relators' Complaint. A signed copy of the Relators' Motion to Dismiss Counts One and Three Without Prejudice is also attached hereto as Exhibit 1. The United States consents to this motion for voluntary dismissal as required by the False Claims Act, 31 U.S.C. § 3730(b)(1). The relators and Government respectfully request that this dismissal become effective only *after* the United States files its Complaint in Intervention.

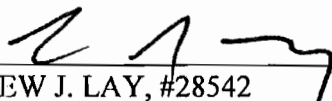
Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States; the United States also requests that all Orders issued by the Court be sent to the government's counsel along with any other parties to the case.

Finally, the United States requests that the Relators' Complaint, the Government's Complaint, this Notice, and the attached proposed Order be unsealed. The United States requests that all other papers on file in this action remain under seal because in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

Proposed orders accompany this notice.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was mailed this 30th day of June, 2014, to the following:

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